

Hon^{ble} Stephen Jacob

THE
ADDRESS

OF

The Minority in the Virginia Legislature
to the People of that State; containing
a Vindication of the Constitutionality
of the Alien and Sedition Laws.

THE awful crisis which has arrived must be felt by us all, however we may differ as to the causes which have produced it, or the measures which may avert its calamity.

That our fellow-citizens may be fully informed of the part taken by their public functionaries, in all the measures touching this subject, it is deemed fair and proper, to submit the following resolutions offered in the House of Delegates, by the Member from Prince George, as a substitute for those adopted, which are subjoined. Nor can it be deemed improper to notice the prevailing distinction between the resolutions. In the latter, declarations of uniting in the common defence are mingled with insinuations of distrust in the Government of the United States, the only political mean by which efficacy can be given to resistance against an invading foe.

Having passed the resolutions, it would seem that the General Assembly had finished their deliberations on the subject, but a novel course was pursued, alike outraging the rules of the Legislature, and derogating from the discernment of their constituents, by a laboured detail of the reasons which induced the legislative adoption of the resolutions. It became necessary, therefore, to meet this second paper, by counter arguments, but this was done with reluctance, and after every attempt to arrest the proposition had failed. Our sharing in the impropriety of departure from usage, must be attributed to the imperious necessity of the case.

The counter arguments are displayed in the following address submitted to the committee of the whole by the Member from Westmoreland. An effort was made in the House, to obtain the circulation of the counter address among the people, by subjoining it to a compilation of papers, in which is inserted the address adopted, directed to be published at the public expence; this request was denied, as will appear by reference to the Journals.

To the liberality of individuals, who have subscribed a sufficient fund for the purpose, is the minority indebted for the publication of their opinions on the very interesting subject which has engaged the attention of the General Assembly, and cannot fail to engage the fullest deliberation of their constituents, who alone can apply a radical remedy to the political disease.

FELLOW-CITIZENS,

OPPOSING, as we did, resolutions of the General Assembly, passed on the 24th day of December, we cannot remain silent under the unprecedented example exhibited in support of them, by a detailed display of those reasons which influenced their adoption. We lament their existence; and we deprecate the deviation from our legislative usage, which their adoption has produced. If this was the only evil resulting from the system of which they form a conspicuous feature, we should in silence wait your application of the constitutional corrective, which you annually dispense: but considering the happiness united America enjoys, and foreseeing the evils which disunited America must inevitably suffer, we cannot shrink from the discharge of the momentous duty to which we are unexpectedly called, and on which we reluctantly enter.

To place the present crisis plainly before you, it is necessary to recur to past transactions.

For the purpose of perpetuating the blessings of our national independence, the people of united America were induced to exchange their first political association for that now existing. The will of the majority produced, ratified, and conducts it. This first principle in our federal pact cannot be impaired without proportionate injury to the body politic.

The fallibility of man, prohibits the hope of perfection in his works; and the best rule for freemen to adopt, in the opinion of our ancestors, was that which inculcates obedience to laws, enacted by a majority of functionaries appointed by the people. Foreseeing the terrible effects which ensue from differences of opinion on national subjects, they added to this first principle two others, which promised immortality to the work of their hands; they declared the compact amendable, and plainly pointed out the ways: they limited power to fixed periods; recurring to the choice of the people for the delegation of authority. Under a constitution thus formed, the prosperity of America was great and unexampled. War broke out in another quarter of the globe, the government and the people of the United States bemoaned alike the distresses incident to a vast portion of the human race; distresses not within their controul, and in the termination of which they did not possess even a remote influence. Avoiding the existing carnage, the continuance of our existing happiness, became, as was proper, the primary object of the attention of government. The President of the United States, a citizen the most tried, and the most beloved, weighing all the difficulties to which our relation to the belli-

gerent powers exposed us, promulgated by proclamation the existing state of things, and warned his fellow-citizens of the pernicious consequences which would follow the dereliction of their neutral condition. An adherence to this situation was enjoined by law, and approved by the general plaudit of our country. Yet, unfortunately for America, and for republican government, a few openly, and more secretly, lifted their voice against their country's will. A foreign minister's contumelious appeal from the acts of government to the people, whose honor and comfort, alike commanded their support of that government, was maintained with affection to the foreign agent, and with acrimony against the constituted authorities of the nation. The subject became familiar to the whole people; and their voice spontaneously uttered, sunk into temporary and contemptuous oblivion, the abettors of this wicked effort. Smothered for a while only, the unextinguished fire rekindled as occasion afforded fuel.

The treaty which terminated our revolutionary war, although followed by the immediate possession of the main good, yet held some secondary objects unsettled. The consequence of war is a state of mental ire, which yields only to acts of mutual beneficence, and to time. The state of mental warfare had not ceased, when the unjustifiable conduct of our late foe, especially on the ocean, rekindled our ardor for hostility and revenge. The Executive of the United States, uninfluenced by the passions of hatred or affection, continuing to view peace, so long as it was to be preserved without dishonor, as his highest duty, in a moment menacing war, made his last effort to avert its miseries from our land. He sent a minister to Great-Britain, for the purpose of settling the existing discord. Peace was preserved, with honor. This event, instead of confirming our internal tranquillity, was turned with much dexterity to the renewal of past animosities; the views of Genet were re-acted in a different dress, and the Executive of the Union was branded with every epithet of opprobrium, because in preventing war, every good wished for by one of the parties to the contract of peace had not been obtained. Here the indignation of the American mind was addressed with considerable effect. At length the people, roused by self-attention, spoke—all was tranquil; and error, whether resulting from mistaken confidence, or vicious intention, sunk again into oblivion. France, our ally, to whom our government had, from the beginning of their war, presented repeated proofs of sincere friendship, taught by the bickerings among ourselves, on the subject of the British treaty, re-echoed American reproaches with French views and French objects. Similitude of sentiment, too often begets union in design—our commerce became a prey to French cruisers; our citizens were captured, and all the injuries heretofore received from the British nation, were repeated on our defenceless country, with this striking difference. A former foe, claiming unexecuted stipulations, inflicted the first; while the latter proceeded from the hand of a former friend, bound to us by the ties of a solemn treaty, and receiving from us every good in our power to bestow, without violating our neutrality, and thereby committing suicide on our national and individual happiness.

Influenced by the same pacific principle, the President, (the same tried and beloved Washington) attempted, as before, by a timely interference to avert the impending war. He sent a minister to

France, with full powers to remove by candid explanations mistaken opinions, to renew ancient friendships, and to perpetuate the blessings of mutual peace. This minister was not even received, but was ordered to depart with marks of contumely and threats of imprisonment.

The successor of Washington, actuated by the same principles, and anxious for the same beneficent end, made a second effort to restore peace, and paid an unusual compliment to the French government, by sending three envoys extraordinary, with ample powers to hear, to explain, to redress, and to bury every complaint in a fair, honorable and friendly adjustment. This renewed testimony of our desire for peace, was returned by increase of insolence and affront.

Thus situated, we had but to choose between submission to the will of a foreign nation, and the maintenance of our independence. What American could hesitate in the opinion? The choice being made, self-preservation commanded preparations for self-defence. With this view, and to this end, various defensive measures were adopted by the last Congress, the most effectual of which were, the equipment of a fleet, the raising of an army, a provision for the removal of dangerous aliens, and for the punishment of seditious citizens. The two first are charged with the atrocious design of creating a monarchy on the ruins of our free government, and the two last are declared to be usurpations of power, in violation of the constitution; while all of them are viewed as parts of a fixed system, tending to the establishment of despotism. This serious accusation, if true, commands your effectual interposition; if untrue, it ought to guard you against the warnings of those who from error, or with the most pernicious design, invite you to the adoption of measures baneful to American happiness and fatal to American liberty.

When the most powerful nation in Europe, by whose insidious policy and numerous armies, populous, warlike and wealthy states have been overturned; whose lust of dominion is insatiable, and whose only rule of conduct is her will; has demanded tribute at our hands, and menaced us with the fate of nations conquered and debased, what means could have been adopted more convenient or more likely to secure our defence? The equipment of a fleet guards the remains of our commerce from their privateers, enables us to incommode any offensive attempts which their enmity might dictate, and to facilitate our exertions for self-defence, by facilitating the conveyance of the requisite supplies for military operations in our extensive country. Important already have been the beneficial consequences to our commerce, flowing from this wise measure, and every benefit to trade in an increased ratio, enlivens and invigorates agriculture; more important will be its effects in securing our protection, should we be forced to the last appeal in defence of our liberty and property.

Upon so solemn an occasion, what curses would be adequate to the supineness of our government, if militia were the only resort for safety, against the invasion of a veteran army, flushed with repeated victories, strong in the skill of its officers, and led by distinguished commanders? Should not the American citizen be prepared to meet the eventual combat, by those acquirements which place him on an equal footing on the day of battle? Or, is he so little esteemed as to be designedly submitted to an unequal conflict? What more than placing him on an equality with his foe is proposed, by raising an

army? Thus our ancestors acted in the revolutionary war; and suspicions perverting their intention, like those now disseminated, would have been treated with contempt, or punished as the schemes of men devoted to the enemy. Where is the change in our situation which authorizes condemnation of a measure now, then admitted to be wise and indispensable? Does it argue a love of country, to paralyze means adopted for its defence? Does it demonstrate affection to our fellow citizens, to reprobate endeavours which bestow upon them equality of skill with their antagonists? Does it evince a wish to disregard and distrust our militia, when an army is formed of citizen soldiers, for that very militia to rally around, and hand in hand to march to attack the foe? Can that army be called mercenary, which is composed of our brothers and our sons, levied by law, paid by law, and embodied to defend their and our common rights? Would your Washington lead a mercenary army? Is he not again your General? Why, then, these unfounded suspicions, and this opprobrious, unwarranted epithet, but to inflame your passions, and to mislead your judgments? Pause, reflect, and say, whether counsel thus administered, can have your good for its object? And whether, under the pretence of promoting your happiness, it does not lead to an issue disastrous to America, and calamitous to Virginia?

Alike erroneous, and alike destructive of the common weal, is the distorted construction of the Alien and Sedition Laws.

Nevertheless, these acts are confidently pronounced unconstitutional, so much so, that to many of our fellow citizens the question may appear to have been completely decided.

In the opinion of some, to deliberate on this subject is criminal, and to pause before we declare that the constituted authorities have knowingly and intentionally violated that sacred charter by which they hold their political existence, is to be inimical to that republican liberty, which constitutes the pride and happiness of our country, and which can only be preserved by preserving that government which is now so boldly arraigned. Had the measures which profess their origin from these laws, been confined to ordinary peaceable and constitutional efforts to effect their repeal; had a decent respect for the real majority of the American people been maintained, no opposition would have been made by those who now address you. —But when a partial irritation, in some degree produced by misconception, is sought to be excited into general hostility against the government of our country, is seized as affording a fair occasion for proceedings which may sap the foundation of our union, we must in obedience to that duty which gave birth to this reply, submit to our fellow citizens, some reflections on these laws.

The act concerning aliens, makes it lawful for the President of the United States, to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States within such time as shall be expressed in such order.

This law has been declared to be unconstitutional, because—first, it transcends the powers of Congress; 2d, it violates that article which restrains the prohibition of migration till 1808; 3d, It unites legislative, executive and judicial powers in the chief magistrate;

4th, It deprives aliens of the constitutional right of the trial by jury. Time will not allow a minute investigation of this subject, the several objections will be but briefly reviewed.

1st, It is alledged to be an exercise of a power not delegated. The constitution of the United States, is in its organization dissimilar to any scheme of government which has been heretofore devised.

It presents to us for many purposes an entire nation, and for other purposes several distinct and perfect sovereignties—Perpetual peace among ourselves; a complete participation of privileges through all the states, and above all safety from abroad, were perhaps the strong motives which induced America to unite under one government. All objects which are general in their nature, which interest all America, which are connected with the general safety; all external objects can only be obtained by the co-operation of the whole, and therefore the powers necessary for their attainment would be naturally vested in the government of the whole. The vast mass of local and interior regulation can be most beneficially attended to by the state sovereignties, and therefore the government of the union is, and ought to be excluded from participating in their formation.

When we examine the situation of the U. States, and the objects for which its government must necessarily have been formed, the mind is irresistably led to the demarcation of a plain line of partition between the general and particular sovereignties. Since the general and state governments equally represent the people, and are alike dependent on them for their origin and their continuance, and are alike accountable to them for their misconduct, those powers which are essential to our happiness and protection, may, with equal safety, as to their abuse, be trusted to the one or to the other. It is therefore rational to suppose, that they are placed where they can be exercised most beneficially, and that they are given to that government which is destined to effect the particular object for which those powers are calculated. This obvious principle seems to have actuated those who framed our constitutions; the powers of peace, war and commerce, of external intercourse in all its variety of forms, of calling out and directing the force and wealth of the nation, are placed in the general government: they are rightly placed, because to that government we look for protection from enemies of every denomination.

With respect to these objects, America is one nation, and therefore the state governments are restrained from interfering with these great acts of sovereignty: The power of protecting the nation from the intrigues and conspiracies of dangerous aliens who may have introduced themselves into the bosom of our country, seems to be of the class with those necessarily delegated to the general government; security to the union from their wicked machinations, cannot otherwise be ensured, and this security is essential to the common good. The means of obtaining intelligence of their plots are in possession only of the general government, nor can any one state do more than expel them from its territory; their right of residence is not unfrequently provided for in treaties, and treaties can only be formed or dissolved by the general government. If in the act of removing them unjustifiable injuries be committed, reparation is demandable by the sovereign of their nation.

This reparation is demandable not from the state, but from the United States' government. All America is therefore interested in the manner in which this power shall be exercised, and would

consequently choose to place it in hands which all America controls.

In conformity then with the general theory of our government, the power of protecting us from the conspiracies of aliens should be associated in the same hands with the force of the nation and the general power of protection from hostility of every kind. Yet it is admitted, that if in the formation of our constitution a different arrangement is made, that arrangement, however inconvenient, must be sacredly obeyed till constitutionally changed.

It behoves us, however, to satisfy ourselves completely on this interesting point.

The government of the United States is indubitably limited as to its objects, however it may be as to the means of obtaining those objects. It possesses only delegated powers, and it is proper to enquire whether the power now under consideration be delegated or not. It is necessary, in pursuing this enquiry, to bear in mind that we are investigating a constitution which must unavoidably be restricted in various points to general expressions, making the great outlines of a subject, and not a law which is capable of descending to every minute detail.

If we construe the former by rules strictly applicable to the latter, the power of fortifying our ports and harbours might well be questioned; nor could the utility of the clause authorising Congress to make all laws necessary and proper for carrying into execution all powers vested by the constitution in the government of the United States, or in any department or officer thereof, be readily pointed out. It would be difficult too to assign a reason for omitting, in the 12th amendment to our constitution, which is evidently copied from the 2d article of the ancient confederation, the very material word *expressly*. That article of the ancient confederation, and the amendment of our constitution, were designed as a plain and explicit admission of the principle, that the powers not delegated are retained. In the confederation all powers not *expressly* delegated; are retained; but in the amendment this very operative word is wisely omitted.

In reviewing then our constitution, to decide on the powers vested for general purposes, in our general government, we must examine the whole paper, we must examine it fairly, but liberally.

Congress has power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." To make reprisals is a power distinct from, and which not unfrequently precedes war; as a branch of this power, those members of Congress who are decided in their declarations against the alien law, united in 1794 in support of the bill for sequestering British property. But reprisals may be made on the *persons* as well as the *property* of aliens; and as sequestration is the exercise, in an inferior degree, of the general power of reprisal on property, so may the removal of aliens be considered as the exercise, in an inferior degree, of the general power of reprisal on persons. If the whole power of reprisal be delegated, the particular degree or manner in which it shall be exercised, is a question of particular discretion, and not of constitutional authority.

Congress has power "to define and punish piracies and felonies, committed on the high seas, and offences against the law of nations."

By the law of nations, or by particular treaty, an alien acquires a right of residence in a country at peace with his own, and it is an

offence against that law to become dangerous to the peace and safety, or to be concerned in any treasonable or secret machinations against the government of the country in which he resides. These offences congress may both *define* and *punish*.

Congress may call forth the militia, "to suppress insurrections and repel invasions;" and further, "the United States shall guarantee to every state in the union, a republican form of government, and *shall protect each of them against invasion.*"

By this latter clause, something further was intended than merely to *repel* invasion. Invasion actually made is to be *repelled*, and for that purpose the militia may be called out. But congress is to do more than merely to repel the actual invasion. This power having been granted by the 8th section of the first article, the constitution in the 4th section of the fourth article, gives the additional power, and makes it the duty of Congress to *protect* each state against invasion. To *protect* against an evil, includes the right of taking proper and necessary steps for its prevention. Of these proper and necessary steps, the government possessed of the power must judge. To cause to depart from our territory the individuals of a nation from whom invasion was apprehended, is most obviously a measure of precaution dictated by prudence and warranted by justice. It appears then to be fairly deducible, from the theory of the constitution, and from a correct view of its particular parts, that the power of protecting the American commonwealth against dangerous aliens, whether dispersed through the interior of our country, or embodied in arms against us, is an existing efficient power placed like all others necessary for the common safety, in the only hands which can bring it into complete and beneficial operation.

2d. The exercise of this power is supposed to have been suspended until the year 1808, by the 9th section of the 1st article of the constitution.

The words are "the migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."

This is obviously designed as an exception to some given power. It would be extravagantly absurd to restrain until the year 1808, the exercise of a power which could not be exercised after that year. Whatever then is suspended by the article just recited, was considered as an existing thing on which the suspended clause could operate. It is the importation and migration of such persons as any of the states then existing should think proper to admit. But for this clause then, it would be in the power of congress to prohibit the migration of aliens into the United States. It will not be easy to find in the constitution a grant of power competent to forbid their entry, which is not equally competent to forbid their continuance in our country. But while this clause furnishes a strong argument in favor of the general power of Congress over the subject, it is necessary to shew that the exception to that general power which it specifies, does not so modify it as to expose us to the machinations of aliens, who, in our bosom, may be conspiring our destruction.

To forbid indiscriminately the admission of certain classes of persons, and to order individuals of those classes to depart when they become dangerous, are certainly two distinct acts, which may be performed

separately, and which do not necessarily interfere with each other. This cannot be questioned—but it is said that the power of ordering suspected aliens to leave our country may be so used as to destroy substantially the power of tolerating their migration; and it is granted that it may be so used, but the possibility of abusing a principle is never supposed to be a correct argument against its use. That the militia may be kept in the field throughout the year is no argument against the power of training them, nor can it be admitted that the possibility of extracting the last shilling from the purse of every individual, is a sufficient objection to the existence of the power of taxation. The right of ordering aliens to depart from the United States is confined to those who are deemed dangerous; and such a construction of the law as would substantially deprive the states of the benefits resulting from the migration of such persons as they might think proper to admit, would be a perversion, and not an execution of it.

It may also be said with respect to Virginia, that she has not chosen to admit the migration of such persons as the alien law enjoins to depart. No law of this state authorises the migration into it of persons of the description comprehended in the act of the United States: on the contrary, our laws expressly authorise the executive to apprehend and secure, or compel to depart this commonwealth, all suspicious persons, being the subjects of any foreign power or state, from whom the president of the United States shall apprehend hostile designs against the said states. If then the power of ordering certain persons to depart is to be connected with that of admitting their migration, the state of Virginia does not admit, but excludes from her territory all those who are contemplated by the alien law.

3dly. This law is also objected to, because it unites legislative, executive and judiciary powers in the President of the United States.

Legislation is the act of making or giving laws, Congress therefore in making this law, performed the part of the legislature, nor is there any thing legislative in the execution of it. If indeed Congress by itself, or perhaps by commissioners appointed by itself, had executed the law, the charge would have worn some semblance of truth; but the commission of the execution of this law to the person charged by the constitution with the execution of all the laws of the union, is certainly in itself unexceptionable. Nor does this act transfer to the President powers belonging properly to the judiciary. It does not involve a decision that its object has committed a crime. It is a measure of general safety, in its nature political and not forensic, the execution of which is properly trusted to the department which represents the nation in all its interior relations—Every law, in its execution, requires some judgment, but the execution of the law is not on that account judicial.

4th. This act deprives the alien of his right of trial by jury. To this extraordinary allegation, it has again and again been answered, that this is a measure of preventive and not of punishing justice. Who would require that a jury should be impannelled, in order to decide whether a nation had or had not cause to suspect a particular alien of dangerous designs against its peace? who would require that the President should unfold to juries throughout the United States all the intelligence he may have received, perhaps from persons within the reach of those employing the aliens, and which establishes in his mind the reality of the danger to be apprehended. Certainly a vested right is to be taken from no individual without a solemn trial, but the right of remaining in our coun-

try is vested in no alien; he enters and remains by the courtesy of the sovereign power, and that courtesy may at pleasure be withdrawn. That Virginia considers the two last objections groundless, is demonstrated by her own act on the same subject. By the 2d section of the sixty-second chapter of our laws, it is enacted, that "it shall and may be lawful for the Governor, with the advice of the council of state, to apprehend and secure, or cause to be apprehended and secured, or compelled to depart this commonwealth, all suspicious persons, being the subjects of any foreign power or state who shall have made a declaration of war, or actually commenced hostilities against the said states, or from whom the President of the United States shall apprehend hostile designs against the said states; provided information thereof shall have been previously received by the executive from him. And in all such cases the Governor, with the advice of the council of state, shall, and he is hereby empowered to send for the person and papers of any foreigner within this state, in order to obtain such information as he may judge necessary."

If the alien law of the United States be an union of legislative, executive and judiciary powers, so is that of Virginia: if one is unconstitutional by depriving an alien of trial by jury, so is the other. This is a question entirely separated from the powers of the different governments; because the provisions of the one constitution, are in these respects as explicit as those of the other. This act of our legislature was not passed hastily or inconsiderately—It was originally enacted in 1785 under the auspices of some of the most zealous opposers of powers of the act of Congress—It was revised, corrected, and reported by the judges and others appointed to collate and digest all the laws of the state. It was then re-enacted in 1792.

Never, during this investigation and re-investigation, did it occur to a single individual, that to order an alien to depart the commonwealth, first under the suggestion of Congress under the old confederation, and afterwards on the suggestion of the President under our improved constitution, united legislative, executive and judicial powers, or deprived an alien of a trial to which he was entitled, viz. trial by jury.

That this measure should originally have been suggested as necessary for national safety, that it should have been preserved through a long course of reflection, that it should be deemed free from the objection of uniting the powers of different departments in the executive, as also of depriving an alien from his residence without a trial by jury, and yet that it should for the same causes produce a ferment in some states, as soon as the principle was adopted by Congress, might warrant reflections which we will not permit ourselves to express.

The act entitled "An act in addition to the act entitled an act for the punishment of certain crimes against the United States," and which is commonly called the Sedition Law, subjects to a fine not exceeding two thousand dollars, and to imprisonment not exceeding two years, any person who shall write, print, utter or publish, or cause or procure to be written, printed, uttered or published, any false, scandalous, malicious writing or writings against the government of the United States, or either house of Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of Congress, or the said President, or to bring them, or either of them, into contempt or disrepute, or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of such a law, or of the powers in him vested by the constitution of the United States, or to resist, oppose or de-

feat any such law or act; or to aid, encourage or abet any hostile designs, of any foreign nation, against the United States, their people or government; the person accused is to be tried by jury, and may give in evidence the proof of the matter contained in the libel.

To constitute the crime, the writing must be false, scandalous and malicious, and the intent must be to effect some one of the ill purposes described in the act.

To contend that there does not exist a power to punish writings coming within the description of this law, would be to assert the inability of our nation to preserve its own peace, and to protect themselves from the attempts of wicked citizens, who incapable of quiet themselves, are incessantly employed in devising means to disturb the public repose.

Government is instituted and preserved for the general happiness and safety; the people therefore are interested in its preservation, and have a right to adopt measures for its security, as well against secret plots as open hostility. But government cannot be thus secured, if, by falsehood and malicious slander, it is to be deprived of the confidence and affection of the people. It is in vain to urge that truth will prevail, and that slander, when detected, recoils on the calumniator. The experience of the world, and our own experience, prove that a continued course of defamation will at length fully the fairest reputation, and will throw suspicion on the purest conduct. Although the calumnies of the factious and discontented may not poison the minds of a majority of the citizens, yet they will infect a very considerable number, and prompt them to deeds destructive of the public peace, and dangerous to the general safety. This the people have a right to prevent: and therefore, in all the nations of the earth, where presses are known, some corrective of their licentiousness has been deemed indispensable. But it is contended, that though this may be theoretically true, such is the peculiar structure of our government, that this power has either never been confided to, or has been withdrawn from the legislature of the union. We will examine these positions. The power of making all laws which shall be necessary and proper for carrying into execution all powers vested by the constitution in the government of the United States, or in any department or officer thereof, is by the concluding clause of the eighth section of the first article, expressly delegated to Congress. This clause is admitted to authorise Congress to pass any act for the punishment of those who would resist the execution of the law, because such an act would be incontestably necessary and proper for carrying into execution the powers vested in the government. If it authorises the punishment of actual resistance, does it not also authorise the punishment of those acts which are criminal in themselves, and which obviously lead to and prepare resistance? Would it not be strange, if, for the purpose of executing the legitimate powers of the government, a clause like that which has been cited should be so construed as to permit the passage of laws punishing open resistance, and yet to forbid the passage of laws punishing acts which constitute the germ from which resistance springs? That the government must look on, and see preparations for resistance which it shall be unable to control, until they shall break out in open force? This would be an unreasonable and improvident construction of the article under consideration. That continued calumnies against the government have this tendency, is demonstrated by uninterrupted experience. They will, if unrestrained, produce in any society, convulsions which, if not totally destructive of, will yet be very injurious to its prosperity and welfare. It is not to be believed that the people of the western parts of Pennsylvania could have been deluded into that unprovoked and wanton insurrection, which called forth the militia of the neighbouring states, if they had not been at the same time irritated and seduced, by calumnies with which certain presses incessantly teemed, into the opinion that the people of America,

instead of supporting their government and their laws, would join in their subversion. Those calumnies then, tended to prevent the execution of the laws of the union, and such seems to be their obvious and necessary tendency.

To publish malicious calumnies against an individual with an intent to defame him, is a wrong on the part of the calumniator, and an injury to the individual, for which the laws afford redress. To write or print these calumnies is such an aggravation of the crime, as to constitute an offence against the government, and the author of the libel is subject to the additional punishment which may be inflicted under an indictment. To publish malicious calumnies against government itself, is a wrong on the part of the calumniator, and an injury to all those who have an interest in the government.

Those who have this interest and have sustained the injury, have, the natural right to an adequate remedy. The people of the United States have a common interest in their government, and sustain in common the injury which affects that government. The people of the United States therefore have a right to the remedy for that injury, and are substantially the party seeking redress. By the 2d section of the third article of the constitution, the judicial power of the United States is extended to controversies to which the United States shall be a party; and by the same article it is extended to all cases in law and equity arising under the constitution, the laws of the United States and treaties made or which shall be made under their authority. What are cases arising under the constitution, as contradistinguished from those which arise under the laws made pursuant thereof? They must be cases triable by a rule which exists independent of any act of the legislature of the union. That rule is the common or unwritten law which pervades all America, and which declaring libels against government to be a punishable offence, applies itself to, and protects any government which the will of the people may establish. The judicial power of the United States, then, being extended to the punishment of libels against the government, as a common law offence, arising under the constitution which creates the government, the general clause gives to the legislature of the union the right to make such laws as shall give that power effect.

That such was the contemporaneous construction of the constitution, is obvious from one of the amendments which have been made to it. The 3d amendment, which declares that Congress shall make no law abridging the liberty of the press, is a general construction made by all America on the original instrument, admitting its application to the subject: It would have been certainly unnecessary thus to have modified the legislative powers of Congress concerning the press, if the power itself does not exist.

But although the original constitution may be supposed to have enabled the government to defend itself against false and malicious libels, endangering the peace, and threatening the tranquillity of the American people, yet it is contended the 3d amendment to that instrument, has deprived it of this power.

The amendment is in these words. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press."

In a solemn instrument, as is a constitution, words are well weighed and considered, before they are adopted. A remarkable diversity of expression is not used, unless it be designed to manifest a difference of intention. Congress is prohibited from making any law respecting a religious establishment, but not from making any law respecting the press. When the power of Congress relative to the press is to be limited, the word *respecting* is dropt, and Congress is only restrained from passing any law abridging its liberty. This difference of expression with respect to religion and the press, manifests a difference of intention with respect to the power of the national legislature over

those subjects, both in the person who drew, and in those who adopted this amendment.

All abridgment of the freedom of the press is forbidden, but it is only an abridgment of that freedom which is forbidden. It becomes then necessary, in order to determine whether the act in question be unconstitutional or not, to inquire whether it does in fact ABRIDGE the freedom of the press.

The act is believed not to have that operation, for two reasons.

1st. A punishment of the licentiousness is not considered as a restriction of the freedom of the press.

2. The act complained of does not punish any writing not before punishable, nor does it inflict a more severe penalty than that to which the same writing was before liable.

1st. If by freedom of the press is meant a perfect exemption from all punishment for whatever may be published, that freedom never has, and most probably never will exist. It is known to all, that the person who writes or publishes a libel, may be both sued and indicted, and must bear the penalty which the judgment of his country inflicts upon him. It is also known to all that the person who shall libel the government of the state, is for that offence punishable in the like manner. Yet this liability to punishment for slanderous and malicious publications, has never been considered as detracting from the liberty of the press. In fact the liberty of the press is a term which has a definite and appropriate signification, completely understood. It signifies a liberty to publish, free from previous restraint, any thing and every thing at the discretion of the printer only, but not the liberty of spreading with impunity false and scandalous slanders, which may destroy the peace, and mangle the reputation, of an individual or of a community.

If this definition of the term be correct, and it is presumed that its correctness is not to be questioned, then a law punishing the authors and publishers of false, malicious and scandalous libels can be no attack on the liberty of the press.

But the act complained of is no abridgement of the liberty of the press, for another reason.

2d. It does not punish any writing not before punishable, nor does it inflict a heavier penalty than the same writing was before liable to.

No man will deny, that at common law, the author and publisher of a false, scandalous and malicious libel against the government or an individual, were subject to fine and imprisonment, at the discretion of the judge. Nor will it be denied, that previous to our revolution, the common law was the law of the land throughout the United States.

We believe it to be a principle incontestibly true, that a change of government does not dissolve obligations previously created, does not annihilate existing laws, and dissolve the bonds of society; but that a people passing from one form of government to another, retain in full force all their municipal institutions, not necessarily changed by the change of government. If this be true, then the common law continued to be the law of the land after the revolution, and was of complete obligation even before the act of our assembly for its adoption. Whether similar acts have been passed by the legislatures of other states or not, it is certain that in every state the common law is admitted to be in full force, except as it may have been altered by the statute law. The only question is, whether the doctrines of the common law are applicable to libels against the government of the United States, as well as to libels against the governments of the particular states. For such a distinction there seems to be no sufficient reason. It is not to a magistrate of this or that description that the rules of the common law apply. That he is a magistrate, that he is clothed with the authority of the laws, that he is invested with

power by the people, is a sufficient title to the protection of the common law. The government of the United States is for certain purposes as entirely the government of each state, chosen by the people thereof, and clothed with their authority, as the government of each particular state is the government of every sub-division of that state; and no satisfactory reason has been heretofore assigned why a general rule common to all, and punishing generally the malicious calumniators of magistrates, should not be as applicable to magistrates chosen for the whole, as those chosen for its different parts.

If then it were even true that the punishment of the printer of malicious falsehoods affected the liberty of the press, yet the act does not *abridge* that liberty, since it does not substitute a harsher or severer rule of punishment than that which before existed.

On points so extremely interesting, a difference of opinion will be entertained. On such occasions all parties must be expected to maintain their real opinions, but to maintain them with moderation and with decency. The will of the majority must prevail, or the republican principle is abandoned, and the nation is destroyed. If upon every constitutional question which presents itself, or on every question we choose to term constitutional, the constructions of the majority shall be forcibly opposed, and hostility to the government excited throughout the nation, there is an end of our domestic peace, and we may for ever bid adieu to our representative government.

The legislature of Virginia has itself passed more than one unconstitutional law, but they have not been passed with an intention to violate the constitution. On being decided to be unconstitutional by the legitimate authority, they have been permitted to fall. Had the judges deemed them constitutional, they would have been maintained. The same check, nor is it a less efficient one, exists in the government of the Union. The judges of the United States are as independent as the judges of the state of Virginia, nor is there any reason to believe them less wise and less virtuous. It is their province and their duty to construe the constitution and the laws, and it cannot be doubted, but that they will perform this duty faithfully and truly. They will perform it unwarping by political debate, uninfluenced by party zeal. Let us in the mean time seek a repeal of any acts we may disapprove, by means authorized by our happy constitution; but let us not endeavour to disseminate among our fellow citizens the most deadly hating against the government of their own creation, against the government, on the preservation of which we firmly believe the peace and liberty of America to depend, because in some respects its judgment has differed from our own.

Various other points are noticed in the address alike calculated to excite your resentment, and provoke your resistance. Seriously do we regret the expression of such sentiments by a body so respectable.

At a time when all ought to unite in repelling every evidence of the existence of division in the United States, on which division our enemy calculates, and with her knowledge of which has had the presumption to upbraid us, it cannot but inflict a deep wound in the American mind to find the commonwealth of Virginia, exhibiting through her legislature, irresistible testimony of the degrading charge; nor will the embittering reflection be softened by the declaration of a determination to repel a foreign invasion, which is occasionally interspersed in those proceedings. Hatred to government is unapt to beget a disposition to unite in its defence, and more probably would project other schemes, coupling defence from invasion, with change of political system. The result of which might be union with the invader, for the purpose of accomplishing a *delectable* reform. Unfortunately for the human race, such coalitions have happened, and unfortunately for the American people, another

instance of like conduct may be afforded. Exhortations to disregard foreign danger under pretence of opposing domestic usurpation, is an artifice which has often been used to divide and ruin republican governments. Switzerland has lately afforded a fatal proof of this melancholy truth, and may Heaven avert the like fate from us.

One other fertile topic of complaint against the general government, we must notice; its fiscal arrangements, and increasing expences.

In considering this subject, always recollect that our revolutionary war left the nation with a heavy debt, (the price of its independence,) and bereft of the means of discharging it.

When an individual, or nation, cannot pay the principal of an honest debt, and can pay the interest, every fair motive commands the principal to be secured, and the interest to be punctually paid. Obedience to this honest injunction produced the funded debt of the United States; and although we pretend not to say that some mode more consonant to the American character, might not have been adopted, producing the same end, yet we do assert that the mode adopted was the result of much labor, and much investigation; and that it received the constitutional sanction. From this we infer that acquiescence in, and support of the system, is the proper conduct of every good citizen.

Added to this original debt, has been the vast expence of defending Kentucky and the western frontiers from the Indian enemy, and the establishment of government in the north and south-western territory.

At present, the defence of the United States claims money, and their defence cannot but swell considerably the public demands.—The stake is our all—and to save his all, who would begrudge a part?

But we derive great consolation in reminding ourselves of the following facts: That our resources are vast, are annually increasing, are managed with ability, and disbursed with integrity; that they are applied to promote the people's good, and the people's good only, consonant to their intention, and by their chosen servants: That the choice of our functionaries recurs as usual, when the faithful servant will receive his reward, and the unfaithful be ordered to depart: That we are a great, powerful and independent nation—and that the safety and happiness of such a people cannot be promoted without proportionate supplies of their money: That the weight of taxation in the congressional system falls almost entirely on the rich: That the capacity to pay rises in proportion to our security from abroad, and our tranquillity at home; that the preservation of peace is, as it has been, our constant desire, to prevent the interruption of which, our government has ably and perseveringly struggled; that war, in defiance of all our endeavors, impends over our heads; and that to avert its calamity, we must be prepared to meet it like men.

Continuing to confide in our government; continuing to regard union as the rock of our political salvation, and the constitution as the mean of its preservation; continuing to prefer a state of peace without dishonor, we will not turn from the perils of war, with a degraded name; but, like our fathers, will be ready to risque life and fortune; expecting from the timely exertions of our government, to be enabled to meet any, and every enemy, on equal terms.

Extract from the Journal of the House of Delegates, Friday, Jan. 4, 1799.

The house, according to the order of the day, resolved itself into a committee of the whole house on the state of the commonwealth, and after some time spent therein, Mr. Speaker resumed the chair, and Mr. Breckenridge reported, that the committee of the whole house had, according to order, had the same under consideration, and had come to several resolutions thereupon, which he read in his place, and then delivered in at the clerk's table, where the same were again read, and are as follows:

Resolved, That the General Assembly of Virginia will co-operate with the authorities of the United States, in maintaining the independence, union, and constitution thereof, against the hostilities or intrigues of all foreign powers whatsoever; and that, although differences of opinion do exist, in relation to internal and domestic measures; yet a charge that there is a party in this commonwealth, under the influence of any foreign power, is unfounded and calumnious.

Resolved, That the General Assembly do, and will always behold with indignation, depredations on our commerce; insults on our citizens; impressments of our seamen; or any other injuries committed on the people or government of the United States by foreign nations.

Resolved nevertheless, That our security from invasion, and the force of our militia, render a standing army unnecessary; that the policy of the United States, forbids a war of aggression; that our whole reliance ought to be on ourselves, and therefore, that while we will repel invasion at every hazard, we shall deplore and deprecate the evils of war for any other cause.

Resolved, That a copy of the foregoing resolutions be sent to each of the senators and representatives of this state in Congress.

The said resolutions being read a second time, a motion was made, and the question being put to amend the same by striking out from the word "Resolved," in the first line, and inserting in lieu thereof the following words.

Resolved, That the President of the United States, in sending to the French republic three envoys extraordinary, vested with the most ample powers, and instructed to use every effort for conciliation, and to maintain the national independence, manifested a sincere disposition to preserve to our country the blessings of peace.

That the humiliating treatment and final rejection of these envoys, by the French Republic, was a gross infraction of the laws and usages of nations, and a marked indignity to the government and people of these states.

That the requisition of a loan of money, as the preliminary to negotiation, was a peculiar aggravation of insult, and decisive proof of hostility of sentiment, and that a compliance with such a requisition would have been a pusillanimous surrender of our national independence.

That the decree of the French councils, subjecting to capture and condemnation, neutral vessels laden in whole or in part with the productions or manufactures of Great-Britain, is an infringement of the rights of neutral nations, and tends in a particular manner to wound the interest and happiness of these states. Professions of amity from a nation which preserves such a law in full operation, are fallacious and insulting.

That whatever our sentiments may be, as to the propriety of particular acts of our own government, our character is mistaken by those nations who suppose that we will not be united in resisting the insidious machinations, and repelling the open hostilities of any foreign government.

That we will, at the hazard of our fortunes and lives, remain what we are, a free, united and independent people: That we will at all times, vindicate our national honor and rights against any country which may invade them; and that we will cheerfully co-operate in such constitutional measures of defence, as may be deemed necessary by the councils of the union.

It passed in the negative; the question being taken by yeas and nays as follow:

YEAS—Messrs Bailey, Ware, Andrew Anderson, Porterfield, Poage, White, Otey, Logwood, Tate, Baker, Breckenridge, John Miller, M'Guire, Moorman, Spencer, Harrison, Herbert, M'Gill, Wolfe, Bynam, Reeves, Mordecai Cooke, John Mathews, Cavendish, Royall, Snyder, King, Fisher, Simons, Godwyn, Tazewell, Young, Richard Corbin, Thomas Lewis, Morris, Wallace, Pollard, Powell, Clapham, Cowan, Nelson, Evans, Ingles, James Taylor, Watkin, Woods, Clarke, Davis, Cureton, George K. Taylor, Brooke, Robinson, Ellegood, M'Coy, Comer, Vinton, Davis, Charles Lewis, Blair, Bland, Boone, Lee, Hungerford, Bradley, Drope, Crockett, Griffin, Andrews—68.

NOES—Messrs. Cabell, Nicholas, Walker, Chaffin, Giles, Fletcher, Ruffin, Bolling, William Allen, Colwell, Perrow, John Taylor, Buckner, Bedford, Tyler, Cheatham, Thomas A. Taylor, Hatcher, Daniel, Roberts, Shackleford, Peterson, Goodwyn, Booker, Westwood, Webb, Jennings, Horner, Haden, Payne, Greer, Benjamin Cooke, Hall, Pleasants, Heath J. Miller, Jones, M'Kinzie, Houston, Starke, Thompson, Jackson, Prunty, Selden, Martin, Redd, James Johnson, John Allen, Gregory, Shearman, Joseph Carter, Callis, Meriwether, Chadwell, Cocke, Francis Eppes, Hudgins, Litchfield, Roebuck, Hill, Scott, Butt, James Mathews, Willis Riddick, Josiah Riddick, Semple, Hurst, Claughton, Dupuy, M'Kinley, Barbour, Wright, Mosely, Woodson, Purnail, Peter Johnston, Pope, Rentfro, William Carter, Hadden, Barnes, Glasscock, Caruthers, Andrew Alexander, Cockrell, Browning, Galewood, Dulaney, Mercer, Stannard, Nat. Fox, John Fox, Mason, Cary, Burnham, Meek, Shield, Foushee, Newton—97.

And then the question being put that the house do agree with the committee of the whole house in the resolutions as reported. This question was also taken by yeas and nays, and carried, 103 to 58; the affirmatives on the former question being the negatives on this; with this variation only, Messrs. Logwood, Moreman, Spencer, Herbert, Tazewell, Ellegood and Hungerford, who voted in the affirmative of the former question, were in the affirmative on this also; and Messrs. Morris, Nelson, and James Taylor, who were present and voted in the affirmative on the last question, were absent on this.

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